

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariana Thomas	Team: Squad #13	CCRB Case #: 202005086	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/19/2020 5:15 AM	Location of Incident: § 87(2)(b)	Precinct: 104	18 Mo. SOL 1/19/2022	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 07/20/2020 10:26 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 07/20/2020 10:26 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jolman Viera	28028	965601	104 PCT
2. POM Cesar Urrutia	30590	965582	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Taylor Tirado	29044	954581	104 PCT
2. SGT Dina Sanfratello	02197	951201	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jolman Viera	Abuse: Police Officer Jolman Viera refused to provide his shield number to § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B.POM Jolman Viera	Abuse: Police Officer Jolman Viera forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
C.POM Cesar Urrutia	Abuse: Police Officer Cesar Urrutia forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
D.POM Jolman Viera	Force: Police Officer Jolman Viera used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
E.POM Cesar Urrutia	Force: Police Officer Cesar Urrutia used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

Case Summary

On July 20, 2020, § 87(2)(b) filed this complaint via the CCRB's call processing system.

On July 19, 2020, at approximately 5:15 a.m., Police Officer Jolman Viera and Police Officer Cesar Urrutia, both of the 104th Precinct, arrived at § 87(2)(b) residence, located at § 87(2)(b) in Queens, in response to her 911 call regarding a verbal dispute she had engaged in with her husband, § 87(2)(b). PO Viera refused to provide his shield number to § 87(2)(b). **(Allegation A: Abuse of Authority, § 87(2)(g))** PO Viera and PO Urrutia decided to remove § 87(2)(b) to the hospital and used physical force against her **(Allegations B-C: Abuse of Authority, § 87(2)(g))** **(Allegations D-E: Force, § 87(2)(g))** § 87(2)(b) § 87(2)(g) § 87(2)(b) § 87(2)(b) § 87(2)(b)

Body-worn camera ("BWC") footage of this incident was obtained from the NYPD Legal Bureau. The footage is in IAs #49-52 (**Board Review 01-04**) and summarized in IAs #89 and 91-93 (**Board Review 05-08**).

Findings and Recommendations

Allegation (B) Abuse of Authority: Police Officer Jolman Viera forcibly removed § 87(2)(b) to the hospital.

Allegation (C) Abuse of Authority: Police Officer Cesar Urrutia forcibly removed § 87(2)(b) to the hospital.

Allegation (D) Force: Police Officer Jolman Viera used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Cesar Urrutia used physical force against § 87(2)(b)

The 911 call audio (**Board Review 09, 10**) revealed that a female 911 caller, identified via investigation as § 87(2)(b) called 911 and reported that her husband was abusing her and that she feared him. She provided her address and said that when officers arrive, they will side with her husband and she will look like a fool. § 87(2)(b) subsequently disengaged the call. Event documents (**Board Review 11**) and police radio communications (**Board Review 12, 13**) revealed that this information was relayed to the responding officers via radio transmission.

In PO Urrutia's BWC footage (**Board Review 03**), beginning at the 03:09 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) opens the front door to the building and tells PO Urrutia and PO Viera that § 87(2)(b) came home drunk, threw her clothes in the hallway, and called 911. At 03:53, PO Viera asks § 87(2)(b) if he wants § 87(2)(b) to stay home or go to the hospital. § 87(2)(b) says § 87(2)(b) should stay home and leads the officers upstairs to their apartment. PO Urrutia meets § 87(2)(b) in the living room, where her 11-year-old son § 87(2)(b) is seated on the couch. PO Viera remains in the hallway with § 87(2)(b). § 87(2)(b) tells PO Urrutia that she and § 87(2)(b) got into an argument about him not taking out the garbage. At 07:43, Police Officer Taylor Tirado and Sergeant Dina Sanfratello, both of the 104th Precinct, enter the living room and tell § 87(2)(b) the officers will take her report and that her and § 87(2)(b) issues will need to be resolved in court. They leave shortly after. At 09:13, § 87(2)(b) tells PO Urrutia that § 87(2)(b) is safe and that there is no violence. She walks towards the front door, opens it, and in a raised voice, says the garbage has worms and should not be there. PO Viera orders her to go back inside and she complies. PO Urrutia exits the apartment and walks outside to his police vehicle to get a Domestic Incident Report ("DIR"). At 13:13, as PO Urrutia reenters the building, § 87(2)(b) yells inaudibly upstairs. At 13:38, § 87(2)(b) says PO Viera ordered her to close her door aggressively. PO Urrutia tells § 87(2)(b) to calm down or the officers will call an ambulance to take her to the hospital. § 87(2)(b) tells him to do it.

At 15:45, PO Urrutia asks § 87(2)(b) to fill out a DIR and she refuses. At 17:37, PO Urrutia tells PO Viera, "She does not want to do the report...you spoke to him, if he wants to go somewhere for a couple of hours and come back..." PO Viera replies, "I already spoke to him. He said he has nowhere to go. The only thing we can do is send her to the hospital now. Do you want me to call the sergeant or...?" PO Urrutia says, "Call the bus then." At 19:30, PO Urrutia asks § 87(2)(b) if she and § 87(2)(b) will continue to scream at each other if the officers leave and § 87(2)(b) says she does not trust § 87(2)(b). At 22:50, PO Urrutia asks if there is anywhere § 87(2)(b) can go. § 87(2)(b) says § 87(2)(b) should leave because she is the one who is drunk. At 24:00, PO Urrutia says he can call an ambulance to take her to the hospital and § 87(2)(b) does not respond. PO Viera tells PO Urrutia to call for one and not to tell § 87(2)(b). At 25:30, PO Urrutia requests an ambulance via his radio and states, "Intox." At 26:30, PO Urrutia sits at a desk in the living room and prepares the DIR. § 87(2)(b) sits on the couch next to the desk and speaks to PO Urrutia about the problems in her marriage and asks for his advice.

The remainder of the incident is more clearly captured in PO Viera's BWC footage (**Board Review 04**), where at the 32:33 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Viera goes downstairs and meets EMT § 87(2)(b) and EMT § 87(2)(b). PO Viera says the couple had a verbal dispute and that § 87(2)(b) is drunk and cannot stay there because they will start fighting again and officers will be called. EMT § 87(2)(b) asks if she is hurt and PO Viera says no, and that it was only a verbal dispute. EMT § 87(2)(b) says, "So are you guys good, or?" and PO Viera says that § 87(2)(b) needs to go to the hospital. EMT § 87(2)(b) asks if PO Viera wants her to go to the hospital and he says yes. The EMTs walk upstairs and into the apartment. At 35:00, PO Viera enters the apartment as PO Urrutia and EMT § 87(2)(b) are telling § 87(2)(b) that she must go to the hospital. She repeatedly says she does not want to go and EMT § 87(2)(b) says they will have to force her. At 39:00, § 87(2)(b) cries and says PO Viera was aggressive toward her, that § 87(2)(b) has asked for a divorce, and that it was her birthday and she had had eight shots of Grey Goose vodka.

At 43:22, PO Viera takes § 87(2)(b) left arm in his left hand and says she needs to come with them. He appears to pull, and § 87(2)(b) lunges forward toward the couch, though it is not clear what causes this. At 43:28, § 87(2)(b) cries and says the officers are hurting her. PO Urrutia holds her left arm with his left hand, as PO Viera says they did not want to do this. PO Viera's hands are not visible, but as he backs up, § 87(2)(b) moves with him with her arm extended forward. At 43:53, PO Urrutia is holding § 87(2)(b) left wrist in his right hand. Though the footage does not depict how she got there, § 87(2)(b) is lying on her back on the floor at the top of the stairs with both arms in the air, as she repeatedly says the officers are hurting her. At 44:15, PO Urrutia pulls up on § 87(2)(b) left arm such that her torso is lifted several inches above the floor. She continues to say he is hurting her and her breast (though no officer touches her breast) as both officers pull her arms up. At 44:46, EMT § 87(2)(b) brings an orange chair up to the top of the stairs and the officers lift § 87(2)(b) into it. § 87(2)(b) ultimately agrees to walk and at 46:00, § 87(2)(b), the two EMTs, and PO Viera all walk out to the ambulance and she enters it.

§ 87(2)(b) statement was generally consistent with the BWC footage (**Board Review 14**). She testified that she called 911 because she and § 87(2)(b) had been verbally arguing about garbage. Between 9 p.m. and 11 p.m. the night before, § 87(2)(b) had consumed five or six shots of vodka; she denied being intoxicated during this incident. PO Urrutia, identified via investigation, told § 87(2)(b) the officers had to separate the couple, and that she would be taken to the hospital. § 87(2)(b) said she did not want to go. PO Urrutia and PO Viera grabbed § 87(2)(b) by her arms and dragged her out of her apartment. When she arrived at § 87(2)(b) § 87(2)(b) told hospital staff that nothing was wrong and that officers had forced her to come. She was given muscle relaxers and medication for pain, and was released around 12:00 p.m. the same day. § 87(2)(b)

was unresponsive to the investigation's attempts to obtain signed HIPAA forms from her; therefore, her medical records were not obtained.]

§ 87(2)(b) was unavailable to the investigation (see IAs for contact attempts).

PO Urrutia's statement was generally consistent with § 87(2)(b) and the BWC footage (**Board Review 15**). He testified that § 87(2)(b) speech was slurred and her eyes were glazed over, which led him to believe she was intoxicated. As they spoke, it became clear to PO Urrutia that the dispute had been verbal and not an assault, despite the job coming over the radio as an assault. PO Urrutia felt it was necessary to separate the couple to avoid the situation potentially escalating, though nothing specific happened to lead him to suspect things might escalate. § 87(2)(b) demeanor remained unchanged throughout the encounter. Since § 87(2)(b) did not have anywhere else to go, PO Urrutia and PO Viera decided to remove § 87(2)(b) to the hospital, both to avoid potential escalation and to have § 87(2)(b) evaluated for intoxication. Because § 87(2)(b) refused to go to the hospital, PO Urrutia and PO Viera each grabbed one of her arms and escorted her out of the apartment. The officers did not pull § 87(2)(b) arms. § 87(2)(b) initially complied with walking, but dropped her weight and fell to the floor and onto her back once outside the apartment. The officers ordered her to stand up but she refused, so they grabbed her arms. PO Urrutia "probably" pulled up on her arms but he did not drag her. He did not recall what PO Viera did. Sgt. Sanfratello did not provide PO Urrutia with any instructions while on scene.

PO Viera's statement was generally consistent with PO Urrutia's statement, and somewhat inconsistent with the BWC footage (**Board Review 16**). He testified that § 87(2)(b) posed a potential danger to others due to her intoxication, for intoxicated people tend to do things they would not typically do when sober, which can escalate a situation. PO Viera denied that he and PO Urrutia made the decision to remove § 87(2)(b) to the hospital and said EMS had final authority. Upon being presented with his BWC footage from the 32:15 to 22:06 minute-marks, PO Viera said that when he said § 87(2)(b) had to go to the hospital, he was making a suggestion. § 87(2)(b) refused to go to the ambulance, so PO Viera grabbed one of her hands, PO Urrutia may have grabbed her other hand, and they escorted her outside. § 87(2)(b) complied with walking; PO Viera did not pull her arm. He did not recall if § 87(2)(b) ever ended up on the floor or if he dragged her, picked her up off the floor, or pulled her arms.

Sgt. Sanfratello's statement was generally consistent with the BWC footage and officer statements (**Board Review 17**). She testified that when she and PO Tirado arrived, she spoke to § 87(2)(b) who seemed calm and stated that he and § 87(2)(b) had gotten into a verbal argument. When Sgt. Sanfratello entered the apartment, PO Urrutia was speaking with § 87(2)(b) who appeared intoxicated, as she had slurred speech, bloodshot, watery eyes, and smelled of alcohol. § 87(2)(b) did not seem to be dangerously intoxicated or appear to pose a danger to herself or others. Sgt. Sanfratello asked § 87(2)(b) who was on the couch, if he was okay and he said he was. Sgt. Sanfratello instructed PO Urrutia to prepare a DIR. She did not provide any additional instructions to the officers for there were no other steps necessary to resolve the situation. Sgt. Sanfratello did not observe any safety concerns while on scene, for § 87(2)(b) was okay, neither § 87(2)(b) nor § 87(2)(b) had any injuries, and the situation did not seem like it had the potential to escalate. Due to § 87(2)(b) intoxicated state, it was possible that a physical altercation could have happened after officers left, but aside from § 87(2)(b) intoxication, there was nothing that indicated that that might happen.

EMT § 87(2)(b) statement was generally consistent with the BWC footage (**Board Review 18**). He testified that § 87(2)(b) appeared intoxicated, agitated, and irate based on her interactions with the

officers and § 87(2)(b) EMT § 87(2)(b) felt § 87(2)(b) could not remain at home because she and § 87(2)(b) would have continued fighting, and someone would have called 911 again. He believed that of the couple, § 87(2)(b) needed to be removed because she was intoxicated, and her child could be left with the sober parent. The officers made the decision to have her removed to the hospital; neither EMT was involved in that decision. § 87(2)(b) argued with the officers, flailed, and became dead weight when the officers held onto her. EMT § 87(2)(b) did not recall much about the physical interaction between § 87(2)(b) and the officers, except that she threw her body to the floor a few times. EMT § 87(2)(b) did not recall this incident (**Board Review 19**).

NYPD Patrol Guide, Procedure 221-13 (**Board Review 20**), defines an “EDP” (Emotionally Disturbed Person) as someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. An officer must take into protective custody and have removed to the hospital in an ambulance, any person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. NYPD Patrol Guide, Procedure 221-01 (**Board Review 21**), states that force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

Based on PO Urrutia’s statement, EMT § 87(2)(b) statement, and the BWC footage, the investigation determined that PO Urrutia and PO Viera collectively decided to have § 87(2)(b) removed to the hospital, despite PO Viera’s denial. PO Urrutia and PO Viera both testified that it was clear to them that no assault had taken place prior to their arrival, and that they feared the situation could escalate once they left, though they had no specific reasons to believe it might. Additionally, Sgt. Sanfratello initially assessed the situation before leaving prior to EMS being called, and testified that she solely instructed PO Urrutia and PO Viera to prepare a DIR, not to call EMS or have § 87(2)(b) removed to the hospital. Furthermore, EMT § 87(2)(b) testified that his basis for believing § 87(2)(b) posed a danger to anyone was the resistance she offered as the officers attempted to escort her out of the apartment, behavior that took place after the decision to remove her to the hospital had already been made.

The investigation determined that prior to the decision to remove § 87(2)(b) to the hospital being made, § 87(2)(b) had been verbally arguing with § 87(2)(b) crying, and intoxicated in her own home. No one in the home had any injuries or expressed feeling unsafe in § 87(2)(b) presence.

§ 87(2)(g)

Further, as the officers lacked any specific reason to believe § 87(2)(b) posed a risk to anyone’s safety, § 87(2)(g)

Allegation (A) Abuse of Authority: Police Officer Jolman Viera refused to provide his shield number to § 87(2)(b)

In PO Viera’s BWC footage, beginning at the 24:15 minute mark of the medial player timestamp (visible at the bottom of the screen), § 87(2)(b) appears at the doorway of her apartment and asks PO Viera, “Sir, can I have your badge number please,” to which PO Viera responds, “Absolutely, in a few minutes.” PO Urrutia then asks PO Viera, “You want me to tell her? I know it.” PO Viera tells him no. PO Urrutia then goes over his radio and requests an ambulance to the location. At 28:42, through the semi-opened apartment door, § 87(2)(b) is heard asking PO Urrutia, who is

inside speaking with her, for PO Viera's shield number, and he provides it to her verbally. In the remainder of the video, PO Viera does not himself provide his shield number to § 87(2)(b)

PO Viera testified that he did not recall whether § 87(2)(b) asked him for his shield number during this incident. Upon being presented with his BWC footage, he acknowledged that it captured § 87(2)(b) asking him for his shield number, but said he had no independent recollection of this and must have been caught up in the moment because he would never deprive someone of his information. PO Viera stated that he did not provide § 87(2)(b) with the information she requested at that time because he was in the process of making a radio transmission for an ambulance. PO Viera told PO Urrutia not to provide his information to § 87(2)(b) because he did not want anyone to "put his information out there," and since § 87(2)(b) requested it from him, he would provide it to her himself. PO Viera did not remember if he ever provided his shield number to § 87(2)(b) during this incident.

NYPD Administrative Guide, Procedure 304-11 (**Board Review 26**), states that officers must courteously and clearly state their rank, name, shield number, and command, or otherwise provide them, to anyone who requests they do.

§ 87(2)(g)

Though PO Viera said he did not recall § 87(2)(b) requesting this information from him independent of his BWC footage, he reasoned that he did not immediately provide it because he was caught up in the moment and was in the process of making a radio transmission. However, the BWC footage reveals that PO Urrutia, not PO Viera, was the one who put over the radio transmission. Further, the BWC footage captures that PO Viera not only refused to provide his shield number to § 87(2)(b) but he also specifically instructed PO Urrutia not to provide it to § 87(2)(b) on his behalf. Though § 87(2)(b) later asked PO Urrutia for PO Viera's shield number and PO Urrutia ultimately provided it to her, the BWC footage shows that PO Viera never provided his own shield number to § 87(2)(b) and PO Urrutia providing it after the fact did not absolve PO Viera of the Administrative Guide's requirement that he provide it to her himself. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been party (**Board Review 23**).
- PO Urrutia and PO Viera have both been members of service for three years and this is the first CCRB complaint to which either has been a subject.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 23, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident. (**Board Review 24**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 13

Investigator:	<u>Ariana Thomas</u> Signature	<u>Inv. Ariana Thomas</u> Print Title & Name	<u>01/04/2022</u> Date
Squad Leader:	<u>Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>01/04/2022</u> Date